WEST VIRGINIA TAX DIVISION

# TSD 389

# Withholding Requirements for Sales of Real Property by Nonresidents

*This publication provides general information and is not meant to be a substitute for tax laws or regulations.*

West Virginia income tax is required to be withheld on sales or exchanges of West Virginia real property and associated tangible personal property when the seller is a nonresident individual or entity and the sale causes a change of ownership. **Either 2.5% of the total payment to the nonresident individual or entity or 4.58% of the estimated capital gain derived from the sale or exchange must be withheld by the individual in charge of reporting the real estate transaction.** This must be done before the deed or other instrument transferring title to the realty is presented for recordation or filing in the county clerk's office.

There are three forms nonresidents should use for withholding on the sale of real property:

- NRAE: Application for Certificate of Full or Partial Exemption. This form must be received by the Tax Division no later than 21 days before the closing date.
- NRSR: Return of Income Tax Withholding for Nonresident Sale of Real Property. This form must be submitted with check or money order within 30 days of the date the aggregate amount of tax due was withheld.
- NRER: Application for Early Refund of Withholding on Sales of Real Property by Nonresidents. This form cannot be filed prior to 30 days of the effective date of the transfer or after December 15th of the tax year in which the property is sold. The appropriate WV income tax return must be filed to obtain a refund.

**For more information, you can:**

- **Call** a Taxpayer Services Representative at (304)558-3333 or toll-free at (800) 982-8297
- **Email** taxhelp@wv.gov
- **Go Online** to tax.wv.gov

## Exceptions

There are 6 statutory "exceptions" to this withholding requirement:

1. The transferor is a resident or a resident entity in West Virginia.
2. The transferor presents to the individual in charge of reporting the transaction a certificate issued by the West Virginia Tax Division stating:
   a. No tax is due from the transferor in connection with the transaction;
   b. A reduced amount of tax is due from the transferor in connection with the transaction and what the reduced amount to be collected is; **or**
   c. The transferor has provided adequate security to cover the amount required to be withheld.
3. The transaction is pursuant to a foreclosure of a mortgage deed of trust or other lien instrument or pursuant to a deed in lieu of foreclosure.
4. The transferor is a governmental agency.
5. The property is the principal residence of the transferor.
6. The property is transferred pursuant to a deed or other instrument of writing that includes a statement that consideration payable for the transfer is zero.

## Definitions

The term "nonresident entity" is defined as an entity that is not formed under the laws of West Virginia and is not qualified or registered with the State Tax Commissioner to do business in West Virginia. If the entity holds a current West Virginia business registration certificate, no withholding is required.

The "individual in charge of reporting the real estate transaction" can be any of the following:

- The person (including any attorney or title company) responsible for closing the transaction;
- The mortgage lender;
- The seller's broker;
- The buyer's broker; or
- A person designated in regulations prescribed by the U.S. Secretary of the Treasury (Treasury Regulation 26 CFR § 1.6045-4).

The buyer of the property is not the individual in charge of reporting the real estate transaction unless there is no attorney, mortgage lender or broker involved in the sale.

"Total payment" is the total sales price paid to the transferor minus:

1. Debts of the transferor secured by mortgage or other lien on the property being transferred that are being paid upon the sale or exchange of the property, and
2. Other expenses of the transferor arising out of the sale or exchange of the property and disclosed on a settlement statement prepared in connection with the sale or exchange of the property, not including adjustment in favor of the transferee.

Total payment does not include adjustments in favor of either the transferor or the transferee that are disclosed on a settlement statement prepared in connection with the sale or exchange of the property.